

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Carmen Sonia Ramirez Martinez,
Petitioner,
v.
Charles L. Ryan; et al.,
Respondents

No. CV-15-00755-PHX-NVW (JZB)

**ORDER
and
DENIAL OF CERTIFICATE OF
APPEALABILITY AND IN FORMA
PAUPERIS STATUS**

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge John Z. Boyle (Doc. 43) regarding petitioner’s Amended Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 9). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 11 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(b) and 72.

On June 27, 2016, Petitioner filed a Motion to Supplement Pleading to Preserve a Claim of Error to Exclude Evidence (Doc. 45). The Court ordered denying the Motion to Supplement but advised Petitioner the Court will consider it as part of an objection to the Report and Recommendation (Doc. 46). On July 18, 2016, the Petitioner filed a Motion for Relief from Order or Judgment (Doc. 47), and the Court treats this motion as a timely objection to the Report and Recommendation. The Court has considered the objections and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those

1 portions of the Report and Recommendation to which specific objections are made). The
2 Court agrees with the Magistrate Judge's determinations, accepts the recommended
3 decision within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's
4 objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject,
5 or modify, in whole or in part, the findings or recommendations made by the
6 magistrate").

7 IT IS THEREFORE ORDERED that Report and Recommendation of the
8 Magistrate Judge (Doc.43) is accepted.

9 Having considered the issuance of a Certificate of Appealability from the order
10 denying Petitioner's Amended Petition for a Writ of Habeas Corpus, a Certificate of
11 Appealability and leave to proceed in forma pauperis on appeal are denied because
12 dismissal of the Petition is justified by a plain procedural bar and reasonable jurists would
13 not find the ruling debatable, and because Petitioner has not made a substantial showing
14 of the denial of a constitutional right.

15 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying
16 and dismissing Petitioner's Amended Petition for Writ of Habeas Corpus filed pursuant
17 to 28 U.S.C. § 2254 (Doc. 9) with prejudice. The Clerk shall terminate this action.

18 Dated this 19th day of July, 2016.

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21 Neil V. Wake
22 Senior United States District
23 Judge
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